IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.44240 of 2006
SANICHAR MAHTO & ORS
Versus
STATE OF BIHAR AND ANOTHER

For the Petitioner : Mr. Rabindra Prasad Singh, Advocate.
For the State : Mr. Jharkhandi Upadhayay, A.P.P.
For O.P. No.2 : None.

O R D E R

Three of the four persons arrayed as accused in Complaint Case No.134(C) of 2000 have filed this application for quashing of the complaint-cum-protest petition including the order dated 23.6.2005 passed therein by the learned Chief Judicial Magistrate, Nalanda at Biharsharif whereby he has taken cognizance against the petitioners under Sections 302, 201/34 I.P.C.

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According to the complainant , Rajendra Prasad, who has been impleaded herein as O.P. No.2, his marriage was solemnized with one Ninju Kumari who died in the year 1988 leaving behind a daughter, Sampi Kumari, who at the relevant time was aged about 10 years and lived in her nanihal. It is alleged that when on 19.10.1998, the complainant on the occasion of Diwali went to present clothes to his daughter, he came to learn that on 6.10.1998 the accused persons had inflicted injuries on his mother-in-law, Dakhiya Devi, and having killed her by administering poison had surreptitiously disposed of her dead body and by dint of they being influential people had managed the doctor to obtain a false certificate regarding the death.

The complaint petition was forwarded to Laheri P.S. for

necessary action and on the basis thereof Laheri P.S. Case No.232 of 1998 was registered wherein the police after due investigation submitted a final form and also recommended proceeding against the informant under Sections 211, 182 Cr.P.C. However, the pending protest petition, was taken up as a complaint case and following an inquiry under Section 202 Cr.P.C. cognizance was taken against the accused persons.

It has been submitted on behalf of the petitioners that they are closely related to the deceased and had no apparent reason to cause the alleged murder of Dakhiya Devi. The learned counsel with reference to the case diary sought to point out that the said Dakhiya Devi had sustained injuries on 5.10.1998 in a jeep-truck collision and had subsequently succumbed to the injuries in course of treatment in the nursing home at Biharsharif. The learned counsel also sought to draw my attention to several paragraphs to show the innocence of the petitioners.

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Be that as it may, all the submissions advanced on behalf of the petitioners is their defence of their purported innocence and cannot be looked into at this stage.

On the other hand, the instant case is admittedly based on the protest petition filed by the petitioners and is proceeding as a complaint case after an inquiry under Section 202 Cr.P.C.

To determine the question whether any process is to be issued or not , what the Magistrate has to be satisfied is whether there is “sufficient ground for proceeding” and not whether there is sufficient ground for conviction. The well settled law on the issue is that since the

object of an inquiry under Section 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true, Magistrate acting under Section 203 Cr.P.C. has to satisfy himself that there is sufficient ground for proceeding. In order to come to his conclusion, he is entitled to consider the evidence taken by him or recorded in an inquiry under Section 202 Cr.P.C. and cannot look into any other matter. Any reference to the case diary would amount to looking at extraneous matters. Reference in this connection may be made in the case of Chandra Deo Vs. Prakash Chandra (AIR 1963 SC 1430). The learned Magistrate has done just that and proceeded on the materials available at the inquiry.

In view of the categoric observations of the Apex Court I find no merit in this application which is dismissed.

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(Abhijit Sinha,J)

Patna High Court, Patna,
Dated: The 3rd day of September, 2008.
Pradeep Srivastava/A.F.R.